

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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In the Matter of Qwest's Introduction of 711

ISSUE DATE: December 3, 2001

In the Matter of Qwest's Introduction of 211,
311, and 511

DOCKET NO. P-421/AM-01-1254
P-421/AM-01-1027

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ORDER APPROVING PROPOSALS WITH
MODIFICATIONS

PROCEDURAL HISTORY

I. The 711 Filing

On June 28, 2001, Qwest Corporation filed a proposal to implement a federal requirement to provide standardized, three-digit dialing to Minnesota's telecommunication relay service, which transmits messages between persons using standard telecommunications equipment and persons using specialized equipment adapted to compensate for communication impairments. The three digits specified by the Federal Communication Commission were 711.

The June 28 filing was assigned docket number P-421/AM-01-1027. On August 8, 2001, Qwest replaced its initial filing with a revised filing, which was assigned docket number P-421/AM-01-1254. The Department of Commerce and Sprint Communications Company L.P. filed comments supporting introduction of the service, challenging the proposed rates, and opposing the Company's proposal to classify 711 service as flexibly priced under Minn. Stat. § 237.761.

II. The 211, 311, and 511 Filing

On August 9, 2001, Qwest filed a proposal to implement three other three-digit dialing mandates – 211 for community information and referral services, 311 for non-emergency access to police and government agencies, and 511 for travel and road condition information.

The Greater Twin Cities United Way filed comments supporting the Company's 211 proposal. The Minnesota Departments of Transportation and Public Safety filed comments supporting the introduction of 511 service, opposing the per-call charge proposed by the Company, and opposing the Company's proposal to classify the service as flexibly priced under Minn. Stat. § 237.761. The Minnesota Department of Commerce filed comments supporting the introduction of all three services, opposing proposed per-call charges for each of the services, and opposing the Company's proposal to classify the services as flexibly priced.

On October 30, 2001, the filings came before the Commission. The following parties appeared: Qwest, the Department of Commerce, the Department of Transportation, the Residential and Small Business Utilities Division of the Office of the Attorney General, and Sprint Communications Company L.P.

FINDINGS AND CONCLUSIONS

III. Factual Background

Among other things, the federal Telecommunications Act of 1996¹ gave the Federal Communications Commission (FCC) exclusive authority over the telecommunications numbering system within the United States.² A later amendment required the FCC to designate the three-digit dialing code 911 as the nationwide number for emergency services.³

Since that time the FCC has designated four other "N11" dialing codes for nationwide use – 711 for the nation's telecommunications relay system, 311 for non-emergency access to police and other government agencies, 211 for community information and referral services, and 511 for travel and road condition information.⁴ These designations have come after long public

¹ Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of title 47, United States Code).

² 47 U.S.C. § 251 (e) (1).

³ 47 U.S.C. § 251 (e) (3).

⁴ The three FCC Orders most relevant here are *First Report and Order and Further Notice of Proposed Rulemaking*, FCC 97-51 (*The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket No. 92-105), released February 19, 1997 and designating 711 for access to relay services and 311 for non-emergency access to police and other government agencies, herein *First Report and Order*; *Second Report and Order*, FCC 00-257, (*The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket No. 92-105), released August 9, 2000 and requiring nationwide implementation of 711 dialing by October 1, 2001, herein *Second Report and Order*; and *Third Report and Order*, FCC 00-256 (*The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket No. 92-105), released July 31, 2000 and designating 211 for community information and referral services and 511 for transportation and road condition information, herein *Third Report and Order*.

proceedings, because N11 dialing codes are scarce public resources. In each case, the FCC concluded at the end of the proceeding that it would serve the national public interest to have universal dialing codes for the services at issue.

IV. 711 Service

A. The Issues

Quest's 711 rate proposal was to charge two one-time, up-front fees: a \$300 service establishment fee and a \$30 per-central-office switch activation fee. These fees had already been paid by Sprint, the company under contract to provide state-wide relay service. Sprint, in turn, had been or would be reimbursed by the Department of Commerce (the Department), which administers the state-wide relay program under Minn. Stat. § 237.51.

The Department supported the two fees as reasonable and cost-based. It opposed their collection from Sprint – and ultimately, from the ratepayer-funded, state-wide relay program – however, on grounds that both fundamental fairness and the FCC's 711 Order required Qwest to recover 711 costs from its own general body of ratepayers, not from all Minnesota ratepayers. The Department asked the Commission to order a refund of charges paid by Sprint, with a directive that the Company devise a 711 rate mechanism that would impose no cost on non-Qwest ratepayers.

Finally, both Sprint and the Department challenged the Company's proposal to classify 711 service as “flexibly priced,” a regulatory category permitting rate changes on short notice with minimal oversight.

B. Commission Action on Cost Recovery

The FCC's Order requiring all carriers to implement 711 service by October 1, 2001 includes the following provisions on cost recovery:

Implementation costs associated with providing access to TRS [telecommunications relay services] through 711 must be borne by all common carriers as an obligation under section 225 (b) (1) of the Act [requiring the FCC to establish relay services for hearing-impaired and speech-impaired persons throughout the nation]. . . . Wireline carriers may properly include the costs they incur in implementing 711 access to TRS with their joint and common costs and recover those costs from the rates charged for intrastate and interstate services, separated pursuant to the Commission's jurisdictional separation rules.⁵

⁵ *Second Report and Order*, ¶ 44.

The Commission agrees with the Department and Sprint that the FCC contemplated treating 711 costs as joint and common costs, the kinds of costs attributed to the general operation of the network and recovered from the general body of ratepayers. This treatment is consistent with the Act's treatment of relay services as a core component of the national telecommunications system, integral to achieving the purposes of the Act.⁶ It is the most reasonable way to recover these costs.

Qwest's proposal – to charge the relay service provider, who in turn charges all Minnesota ratepayers through the TACIP⁷ program – is not fair and reasonable and therefore violates Minn. Stat. § 237.06. Not only does it risk double-charging the customers of other companies, as those companies build their 711 costs into general rates, but it depletes the TACIP fund, to the detriment of the public. It is far more appropriate to recover these costs from Qwest ratepayers as part of the joint and common costs of maintaining the Qwest network.

The Commission will therefore require Qwest to refund the nonrecurring charges paid by Sprint (and thus by the TACIP fund) and to devise a recovery mechanism to recover these costs as joint and common costs from the general body of Qwest ratepayers.

C. Commission Action on Service Classification

1. Background

Minnesota's Telecommunications Act permits telephone companies, upon meeting certain conditions, to opt out of rate-of-return regulation in favor of streamlined regulation.⁸ Companies opt out by securing Commission approval of an Alternative Form of Regulation Plan (an AFOR), which specifies the terms of the new regulatory compact between the company and the public.

One of the things all AFORs must do is classify all services the company offers into three categories: price-regulated, flexibly priced, and non-price-regulated. These categories determine how quickly the company can change rates for a service and how much oversight the Commission will exercise over a rate change. The three classifications form a continuum, with the Commission exercising the most control over price-regulated services and the least over non-price-regulated services. The three classifications are designed to reflect how essential the service is, how available it is from other providers, and how likely it is that market forces will act as a check on prices.

The Company has proposed to classify 711 service as flexibly priced. The Department and all commenting parties contend that 711 service is a basic service that should be classified as price-regulated.

⁶ 47 U.S.C. § 225 (b) (1).

⁷ Telecommunications Access for Communication-Impaired Persons.

⁸ Minn. Stat. § 237.76 *et seq.*

2. The Legal Standard

The AFOR statute sets the standards for classifying services as price-regulated or flexibly priced.⁹ Price-regulated services must meet three conditions. They must be

- (1) services essential for providing local telephone service and access to the local telephone network;
- (2) services integrally related to privacy, health, and safety of the company's customers; and
- (3) services for which no reasonable alternative exists within the relevant market or geographic area on reasonably comparable terms and conditions.¹⁰

The statute gives examples of price-regulated services – residential and business local service, call tracing, touch tone service, extended area service, switched network access, telephone directories, 911 service, installation and repair services, local operator services, call number blocking, toll blocking, 1-900 or 1-976 access blocking.

Flexibly-priced services are services which neither meet the standards for price-regulated status nor are subject to the brisk competition that would qualify them for non-price-regulated status.¹¹

3. Price-Regulated Classification Adopted

The Commission finds that 711 service is properly classified as a price-regulated service.

First, 711 service is essential to the provision of local phone service and to access to the local telephone network. Ensuring the most seamless possible telecommunications connections between communication-impaired subscribers and non-communication-impaired subscribers is a network integrity issue. As the FCC noted, it benefits both persons with speech and hearing disabilities and persons without those disabilities, by significantly improving both groups' ability to use the telecommunications network to communicate with one another.¹²

⁹ Minn. Stat. § 237.761.

¹⁰ Minn. Stat. § 237.761, subd. 2.

¹¹ Minn. Stat. § 237.761, subds. 4 and 5.

¹² *Second Report and Order*, ¶ 32.

Indeed, Congress has found that making telecommunications relay services available “to the extent possible and in the most efficient manner” is essential to carrying out the purposes of the federal Communications Act. 47 U.S.C. § 225 (b). The Commission finds that it is also essential to carrying out the purposes of Minnesota’s telecommunications statutes.

Second, 711 service is integrally related to the privacy, health, and safety of the Company’s customers. Most subscribers rely on the telephone for access to the persons, services, and information on which their privacy, health, and safety depend. It is imperative that communication-impaired persons have the same effective access to essential persons, services, and information as non-communication-impaired persons.

It is equally important that non-communication-impaired persons have effective access to communication-impaired persons upon whom their privacy, health, and safety may depend. Further, the FCC has found that 711 service is required as a step toward fulfilling the goals of the Americans with Disabilities Act, which protects and maintains the privacy, health, and safety of Americans with disabilities by banning discrimination in employment, public services, public accommodations, and telecommunications.¹³

Finally, there is no reasonable alternative to 711 service. The essence of the service is the speed, convenience, and efficiency of three-digit dialing. The alternative, which is ten- to twelve-digit dialing, is not reasonably comparable.

For all these reasons, the Commission concludes that 711 service should be classified as a price-regulated service.

V. 211, 311, and 511 Service

A. The Issues

Qwest proposed the same rates for 211 service (three-digit dialing for community information and referral services), 311 service (three-digit dialing for non-emergency access to police and other local government agencies), and 511 service (three-digit dialing for travel and road condition information). Those rates comprised two up-front, one-time fees – a \$300 service establishment fee and a \$30 per-central-office switch activation fee – and a per-call fee of two cents. The Company also proposed to classify all three services as flexibly priced services.

The Greater Twin Cities United Way supported the Company’s 211 proposal. The Minnesota Departments of Transportation and Public Safety opposed both the proposed classification and the per-call fee for 511 services. These agencies estimated that the per-call fee would raise the cost of the 511 program to Minnesota taxpayers by \$250,000 per year.

¹³ *Second Report and Order*, ¶ 1.

The Minnesota Department of Commerce opposed both the proposed classification and the per-call fee for all three services. While the agency believed that Company cost studies supported the proposed one-time fees, it did not believe that those studies supported the proposed recurring fee of two cents per call. The Department therefore recommended rejecting that charge as excessive.

B. Commission Action on Proposed Rates

The Commission agrees with the Department of Commerce that the two non-recurring charges proposed by the Company are adequately supported by its cost studies and should be approved. The Commission also agrees that the proposed two-cent per-call charge is not adequately supported and should be rejected.

As the Department points out, the Company's cost studies do not reflect any offsetting cost savings associated with implementing three-digit dialing. They include contribution rates that may be inappropriate for services essential to the public health, safety, and welfare. They would impose substantial costs on social services programs (211) and on taxpayer-funded public safety programs (311 and 511), signaling a need for more precise cost documentation and, at least potentially, careful consideration of alternative rate designs.

For all these reasons, the Commission concludes that the two-cent per-call charge is not adequately supported in the record and therefore fails the "fair and reasonable rate" test of Minn. Stat. § 237.06.

C. Commission Action on Service Classification

As discussed earlier, Minn. Stat. § 237.761, subd. 2 defines price-regulated services – those subject to the highest degree of regulatory control – as services

- (1) essential for providing local telephone service and access to the local telephone network;
- (2) integrally related to privacy, health, and safety of the company's customers; and
- (3) for which no reasonable alternative exists within the relevant market or geographic area on reasonably comparable terms and conditions.

The Commission finds that 211, 311, and 511 services are all properly classified as price-regulated services.

First, these services are essential to the provision of local phone service and to access to the local telephone network. Like 911, these services are designed to ensure – by creating a widely recognized, easily remembered, and easily dialed number – that subscribers in dangerous or stressful situations can use the telecommunications network to gain access to the public or community resources they need.

Second, these services are integrally related to the privacy, health, and safety of the Company's customers. The FCC reports that the use of 311 service for non-emergency access to police can significantly reduce congestion on the 911 system, permitting emergency calls that would otherwise be blocked to reach 911 operators, increasing public safety.¹⁴ The agency reports that a sampling of calls using 211 to access community information and referral services showed that 7% involved immediate shelter needs, 20% involved eviction and similar housing needs, 16% involved utility issues, 9% involved a need for food, and the remainder involved miscellaneous issues ranging from prescription assistance to suicide.¹⁵

The FCC and the Minnesota Departments of Transportation and Public Safety expect 511 service to increase safety on the roadways, reduce fuel consumption, reduce pollution, and reduce traffic congestion. Clearly, these three services are integrally related to the privacy, health, and safety of Qwest's customers.

Finally, there are no reasonable alternatives to these services. Their essence is the speed, convenience, and efficiency of three-digit dialing. The alternatives, which typically involve locating and dialing one or more ten- to twelve-digit numbers, are not reasonably comparable. Further, all three numbers perform the important function of consolidating, at one telephone number, access to organizations or departments that otherwise have separate numbers. They simplify and expedite the often daunting task of using the telecommunications network to tap into essential government and community resources.

For all these reasons, the Commission concludes that 211, 311, and 511 services should be classified as price-regulated services.

The Commission will so order.

ORDER

1. Qwest's proposal to introduce 711 service is approved as modified herein. Qwest shall refund all rates it has charged for the service and shall devise a cost recovery mechanism to recover 711 costs as joint and common costs from its general body of ratepayers.
2. Qwest's proposal to introduce 211, 311, and 511 service is approved as modified herein. The Company's proposal to charge a per-call fee is rejected, as set forth above.
3. Qwest shall file revised tariffs reflecting the decisions herein.

¹⁴ *First Report and Order*, ¶ 36.

¹⁵ *Third Report and Order*, ¶ 18.

4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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